

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN A. SCHULLER, D.P.M.,
RESPONDENT.

FINAL DECISION
AND ORDER
LS8711031MED

The parties to this action for the purposes of Wis. Stats., sec. 227.53
are:

John A. Schuller, D.P.M.
400 West Silver Spring Drive
Glendale, WI 53217

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

The parties in this matter agree to the terms and conditions of the
attached stipulation as the final disposition of this matter, subject to the
approval of the Board. The Board has reviewed this Stipulation and considers
it acceptable.

Accordingly, the Board in this matter adopts the attached stipulation
and makes the following:

FINDINGS OF FACT

1. That John A. Schuller, D.P.M., Respondent herein, date of birth
February 20, 1953, is a podiatrist holding a license to practice podiatric
medicine and surgery in the State of Wisconsin; that his license which bears
#0000464 was granted June 13, 1980; that his place of practice is 400 West
Silver Spring Drive, Glendale, WI 53217.

COUNT II

2. That Wis. Stats. sec. 655.23(1) requires all health care providers
permanently practicing or operating in this state to pay the yearly assessment
into the Patients Compensation Fund under sec. 655.27.

3. That from July 1, 1983 through June 30, 1984, Respondent was a
health care provider permanently practicing in this state, as defined by
Wis. Stats. sec. 655.001(8) and (11) then in effect, as a result of his
practicing podiatric medicine and surgery in Wisconsin.

4. That in approximately June of 1983 Respondent received the premium notice from his primary medical malpractice liability insurance carrier. Respondent determined that the premium would be significantly less if Respondent discontinued doing surgery (cutting on bone) and obtained non-surgical coverage. Respondent elected to follow this course of action and ultimately paid a decreased premium for non-surgical primary coverage.

5. At the same time as Respondent was deciding to make the change in his primary coverage, Respondent received his notice from the Office of Insurance Commissioner which stated the amount which was due to the Patient's Compensation Fund for the year July 1, 1983 through June 30, 1984. Respondent's office manager contacted the Office of Insurance Commission and attempted to determine what that amount would be for non-surgical coverage. According to Respondent's office manager, the office manager was advised by the Insurance Commissioner's Office that they would determine what a non-surgical amount would be for the fund payment and would send a statement in that amount to Respondent's office. According to the office manager, no such statement was ever received, although the office manager contends that she requested several times that such a statement be sent.

6. Ultimately, Respondent and Respondent's office manager forgot about the Patient's Compensation Fund payment and Respondent failed to pay the annual assessment into the Patient's Compensation Fund for July 1, 1983 through June 30, 1984.

7. That Wis. Stats. sec. 655.23(7) provides that health care providers permanently practicing or operating in this state shall comply with sec. 655.23 before exercising any rights or privileges conferred by their health care providers' licenses or certificates of registration.

COUNT VIII

8. That from July 1, 1986 through the present Respondent has practiced podiatric medicine in the State of Wisconsin.

9. That effective July 1, 1986 podiatrists practicing in the State of Wisconsin no longer are required to pay the yearly assessment into the Patients Compensation Fund or comply with the other insurance requirements of Chapter 655 Wis. Stats.

10. That effective July 1, 1986 sec. 448.075 Wis. Stats. requires:

"Every licensed podiatrist shall annually submit to the board evidence that the podiatrist has in effect malpractice liability insurance coverage in the amount of at least \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year. The board may suspend, revoke or refuse to issue or renew the license of a podiatrist who fails to procure or to submit proof of the malpractice liability insurance coverage required under this section."

11. That in June, 1986 Respondent asked his office manager to obtain quotes from medical malpractice liability insurance companies for the coverage specified in Finding of Fact #10. Respondent requested that the office manager find non-surgical coverage and a company that provided for a payment plan of the premium rather than requiring the entire premium prior to the time coverage began.

12. Respondent was not advised by his office manager of any available non-surgical coverage with a payment plan which Respondent was able to pay. That Respondent did not have in effect the malpractice liability insurance coverage required by sec. 448.075, Wis. Stats. until March, 1987.

13. In March, 1987 Respondent obtained prospective coverage in the amount required by the statute. Respondent also obtained retroactive coverage in the appropriate amount effective July 1, 1986.

CONCLUSIONS OF LAW

1. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stats. sec. 448.02(3).

2. That the Wisconsin Medical Examining Board has authority to enter into the stipulated resolution of this matter pursuant to Wis. Stats. sec. 227.44(5).

3. That Respondent's conduct in practicing podiatric medicine and surgery in the State of Wisconsin from July 1, 1983 through June 30, 1984, while violating the requirements of Wis. Stats. sec. 655.23(1) is unprofessional conduct as defined by Wis. Adm. Code sec. Med 10.02(2)(g) and Wis. Stats. sec. 448.02(3).

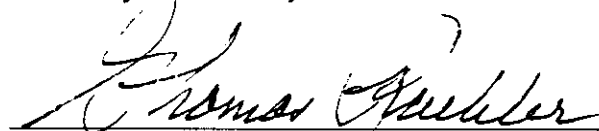
4. That Respondent's failure to comply with the requirements of sec. 448.075, Wis. Stats. from July 1, 1986 to March, 1987 is the violation of a provision of Chapter 448 of the Wisconsin Statutes and constitutes unprofessional conduct as defined by sec. 448.02(3) Wis. Stats. and Wis. Adm. Code sec. Med 10.02(2)(a).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that Counts I, III, IV, V, VI and VII are dismissed.

IT IS FURTHERED ORDERED, that John A. Schuller, D.P.M. is hereby REPRIMANDED.

Dated at Madison, Wisconsin this 24th day of March, 1988.



G. Thomas Pfaehler, M.D., Secretary
Wisconsin Medical Examining Board

GTP:JRZ:jrb
DOEATTY-46

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN A. SCHULLER, D.P.M.,
RESPONDENT.

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:
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:
:

STIPULATION
LS8711031MED

It is hereby stipulated and agreed by and between John A. Schuller, D.P.M., Respondent; Richard L. Kaiser of Law Offices of William A. Pangman & Associates, attorneys for Respondent; John R. Zwieg, attorney for the Complainant, Wisconsin Department of Regulation and Licensing, Division of Enforcement; and, the Wisconsin Medical Examining Board, as follows:

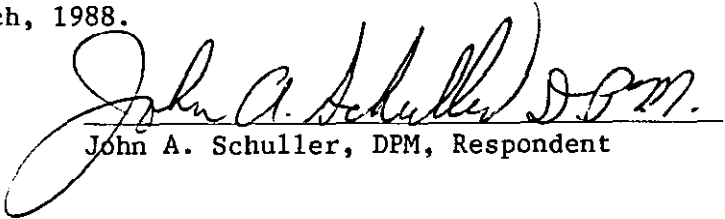
1. That this Stipulation may be submitted directly to the Wisconsin Medical Examining Board and need not be submitted to William W. Berry, the Hearing Examiner appointed in this matter.
2. That the Final Decision and Order attached to this Stipulation may be made and entered in this matter by the Wisconsin Medical Examining Board, without prior notice to any party.
3. That in the event that any portion of this Stipulation or proposed Findings of Fact, Conclusions of Law, Order or Final Decision is not accepted by the Wisconsin Medical Examining Board that the entire Stipulation and proposed Findings of Fact, Conclusions of Law, Order and Final Decision shall be void and have no effect. In the event that this resolution is not accepted by the Board, the parties agree not to contend that the Board has been biased in any manner as a result of these documents being presented to the Board in this attempted resolution.
4. That the Respondent, the attorneys for the parties, and the member of the Board assigned as the investigative advisor in this matter may appear before the Wisconsin Medical Examining Board and argue in favor of acceptance of this Stipulation and the entry and issuance of the attached Final Decision and Order.
5. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stats. sec. 448.02(3).
6. That the Wisconsin Medical Examining Board has authority, pursuant to Wis. Stats. sec. 227.44(5) to resolve this contested case by stipulation.
7. That based solely upon the agreements made by Respondent in this Stipulation, the attorney for the Department of Regulation and Licensing, Division of Enforcement, recommends to the Wisconsin Medical Examining Board that Counts I, III, IV, V, VI and VII of the Disciplinary Complaint be dismissed.
8. That based solely upon the agreements made by Respondent in this Stipulation the Wisconsin Medical Examining Board agrees to dismiss Counts I, III, IV, V, VI and VII of the Disciplinary Complaint in this matter.

9. The sworn testimony of Respondent's office manager, which was taken in a deposition on January 21, 1988, indicates that Respondent's failure to make the payment into the Patients Compensation Fund from July 1, 1985 through June 30, 1986 (as alleged in Counts III and IV of the Complaint) was entirely the fault of the office manager, who assured Respondent that the payments had been made.

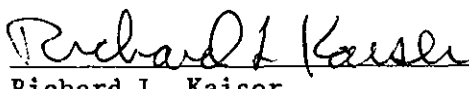
10. That the sworn testimony of Respondent's office manager, which was taken in a deposition of January 21, 1988, indicates that Respondent's failure to maintain the proper primary medical malpractice liability insurance coverage from September 26, 1984 through June 30, 1986 (as alleged in Counts V and VI of the Disciplinary Complaint) was entirely the fault of the office manager.

11. That the conduct of Respondent's office manager was due to emotional difficulties, for which she is now receiving professional assistance.

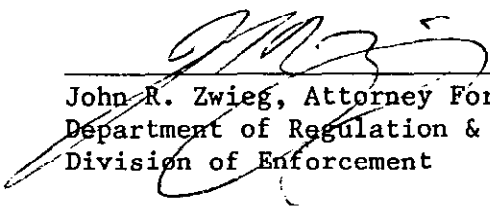
Dated this 9TH day of March, 1988.


John A. Schuller, DPM, Respondent

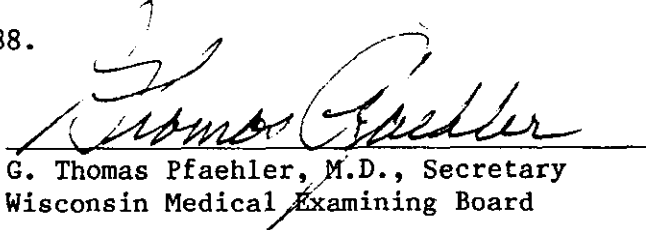
Dated this 9th day of March, 1988.


Richard L. Kaiser
Law Offices of
William A. Pangman & Associates
Attorneys For Respondent

Dated this 14th day of ~~February~~ ^{March}, 1988.


John R. Zwieg, Attorney For Complainant
Department of Regulation & Licensing
Division of Enforcement

Dated this 24th day of March, 1988.


G. Thomas Pfaehler, M.D., Secretary
Wisconsin Medical Examining Board

JRZ:jrb
DOEATTY-48

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is April 11, 1988

WLD:dms
886-490